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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/997,034

11/28/2001

Jens Grieswald

7123 US

1255

66638

7590

12/02/2008

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EXAMINER

HOM, SHICK C

ART UNIT

PAPER NUMBER

2416

MAIL DATE

DELIVERY MODE

12/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/997,034	Applicant(s) GRIESWALD, JENS	
	Examiner SHICK C. HOM	Art Unit 2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 and 6-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Farooq (6,973,043).

Regarding claims 1 and 6:

Farooq discloses the circuit and method for testing a communication system that is subdivided into functional layers comprises a port that allows communication by a test apparatus directly with any layer that is higher than a first layer of the

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functional layers without the communication previously having to pass through the first layer (col. 1 lines 18-22, the background of the invention, which recite the use of the media access control MAC layer for access clearly anticipate the communication system that is subdivided into functional layers including a port that allows communication by a test apparatus; Fig. 2 shows the testing of the network logic 36 by the test instrument 18', i.e. by evaluation or analysis of the output data; and col. 1 line 66 to col. 2 line 6 and col. 4 lines 52-65 recite the network logic being interconnection with the test instruments without the physical layer as claimed).

Regarding claims 2-4 and 7-10:

Farooq discloses wherein the functional layers correspond to an OSI reference model (col. 1 lines 1-22 recite the MAC layer for access); wherein the communication comprises data input into and/or data output from the port (Fig. 2 shows the input data 34 and output data 46); wherein processing of the communication is realized on a single chip, with the port being provided on the chip (col. 3 lines 6-13 recite the use of network test device being on a chip);

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providing the step of inputting test data into the port before the outputting step (Fig. 2 shows the emulation hardware 12 inputting test data before outputting to test inst. 18' via twisted pair 46);

wherein the test data comprise a stimulation signal; wherein the response data comprise a response to the stimulation signal; and wherein the response data comprise a monitoring signal (Fig. 2 shows and col. 3 lines 6-13 recite providing a simulated network data from the emulation hardware 12 and the test instrument 18' monitoring the response of the data for evaluation).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farooq (6,973,043) in view of Warren (6,381,721).

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Regarding claim 5:

For claim 5, Farooq discloses the circuit arrangement described in paragraph 3 of this office action. For claim 5, Farooq discloses all the subject matter of the claimed invention with the exception of wherein the processing of the communication is realized on a first chip and the port on a second chip, the first and second chips being linked with each other for data transfer as recited in claim 5.

Warren from the same or similar fields of endeavor teach that it is known to provide the processing of the communication is realized on a single chip, with the port being provided on the chip (see col. 1 lines 55-67) and wherein the processing of the communication is realized on a first chip and the port on a second chip, the first and second chips being linked with each other for data transfer (see col. 3 line 43 to col. 4 line 16 and the first and second chip in claim 5).

Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide the processing of the communication being realized on a single chip, with the port being provided on the chip and the processing of the communication being realized on a first chip and the port on a second chip, the first and second chips being

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linked with each other for data transfer as taught by Warren in the circuit arrangement of Farooq.

The motivation for providing the processing of the communication being realized on a single chip, with the port being provided on the chip and the processing of the communication being realized on a first chip and the port on a second chip, the first and second chips being linked with each other for data transfer as taught by Warren in the circuit arrangement of Farooq being that it provides the desirable added feature of integrated circuit technology whereby two chips are used one for the port and the other for communication for better reliability to the circuit arrangement of Farooq.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tendo discloses a method and apparatus for testing network and recording medium. See Fig. 2 for the 7-layer model and Fig. 3 shows the testing device connected to the hub not to the LAN.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHICK C.

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HOM whose telephone number is (571)272-3173. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pham Chi can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SH

/Chi H Pham/
Supervisory Patent
Examiner, Art Unit 2416
11/25/08